

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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IMMIGRATION JUSTICE CLINIC OF THE )	
BENJAMIN N. CARDOZO SCHOOL OF LAW )	
)	<b>COMPLAINT FOR</b>
)	<b>INJUNCTIVE RELIEF</b>
Plaintiff, )	
)	
v. )	Case No.: 12 CIV 1874 (GD)
)	
U.S. DEPARTMENT OF STATE )	ECF CASE
)	
Defendant. )	
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**COMPLAINT FOR INJUNCTIVE RELIEF**

1. This is a civil action for injunctive relief, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel immediate processing and disclosure by the United States Department of State of agency records responsive to the Plaintiff's request, and for such other relief as the court deems appropriate. Specifically, the Plaintiff seeks immigration-related documents of Youngchu Core, whom the Plaintiff represents in removal proceedings. (*See* Ex. A.)

**JURISDICTION AND VENUE**

2. This Court has personal and subject-matter jurisdiction to hear this claim under 5 U.S.C. § 552(a)(4)(B); 5 U.S.C. § 552(a)(6)(E)(iii); and 28 U.S.C. § 1331.

3. Venue lies in the Southern District of New York under 5 U.S.C. § 552(a)(4)(B).

## **PARTIES**

4. The Plaintiff, the Immigration Justice Clinic of the Benjamin N. Cardozo Law School (“the Clinic”), is a not-for-profit legal practice housed at Cardozo School of Law, in New York City, New York. The Clinic was founded in 2008 to provide pro bono legal representation to indigent immigrants in removal proceedings. Under the supervision of experienced practitioners, law students in the Clinic represent individuals and community-based organizations in public advocacy, lobbying, media, and litigation efforts. In carrying out this work in the interests of its individual clients and the public, the Clinic frequently collects government records and information about government activities.

5. The Defendant, the United States Department of State (“the Department”), is an executive branch agency of the United States government, as defined by 5 U.S.C. §§ 552(f) and 551(1). The Department maintains records concerning visa requests from non-citizens attempting to enter the United States as well as consular assistance given to United States citizens abroad.

## **STATEMENT OF FACTS**

### **A. Plaintiff’s FOIA Request Seeking Records Necessary to Ms. Core’s Immigration Case.**

6. On December 9, 2010, the Clinic submitted a FOIA request to the Department of State “for release of [the client Youngchu Core’s] immigration records, including any visa petition filed on her behalf, any records that indicate her Alien Number, and any records that show her legal entry into the United States.” (*See* Ex. A.) The Clinic also requested expedited processing of the request. (*Id.*)

7. The Clinic requested the records, and expedited processing of those records, to assist in establishing a defense to a charge of removability against Ms. Core in Immigration Court and to aid in having her released from Immigration and Customs Enforcement (ICE) detention.

8. Ms. Core is charged with being present in the United States without having been admitted or paroled. The Clinic believes that the Department may have records that contain information on how Ms. Core may have entered the country, and that those documents may establish a defense to the charge that Ms. Core entered the country illegally. The Department's failure to produce any documents has precluded the Clinic from obtaining information that would assist Ms. Core in her immigration proceedings. The Clinic's lack of access to such records places Ms. Core at risk of detention and deportation.

9. Due to Ms. Core's mental incompetence she has been unable to assist the Clinic in her own defense in her removal proceedings. Psychological examinations have found that Ms. Core suffers from severe and persistent mental illness and significant cognitive impairment, rendering her an unreliable personal historian, unable to provide the Clinic with even basic biographical information, such as her place of birth, how many children she has and their names, addresses of places she has lived, or her family's address or phone number. Similarly, she has been unable to provide reliable information related to her immigration status.

10. Although Ms. Core has been released from ICE custody, she remains in removal proceedings. The Immigration Judge, finding Ms. Core mentally incompetent and an unreliable source of even basic biographical information, terminated the proceedings. However, the Department of Homeland Security (DHS) has appealed to the Board of Immigration Appeals from the Immigration Judge's order to terminate.

11. Because Ms. Core's proceedings are still ongoing, and because the Immigration Judge's termination was without prejudice, the Clinic's need for the requested documents is as pressing now as it was at the time when the request was made.

**B. The Department's Violation of the Freedom of Information Act.**

12. On January 4, 2011, the Department denied the Clinic's request for expedited processing. (*See* Ex. B.)

13. On January 25, 2011, the Clinic timely appealed the Department's denial of expedited processing. In the appeal, the Clinic specifically cited a "compelling need for the information," arguing that Ms. Core's ongoing detention, lack of access to appropriate mental health treatment, and inability to assist in her own immigration proceeding constituted an "impairment of her due process rights and a harm to her substantial humanitarian interests." (*See* Ex. C.)

14. On March 11, 2011, the Department denied the Clinic's appeal from the denial of the Clinic's expedited processing request, informing the Clinic that Ms. Core's lack of access to medical care or documents to assist in her own defense did not meet any of the criteria for granting expedited processing. (*See* Ex. D.) The Department wrote that that "every effort" would be made to process the initial request in a "timely manner." (*Id.*)

15. On December 8, 2011, the Clinic appealed from the Department's failure to make a determination or disclose documents in a timely manner as required under 5 U.S.C.

§ 552(a)(6)(A) and 5 U.S.C. § 552(a)(3)(A). (*See* Ex. E.)

16. On December 16, 2011, the Department informed the Clinic that the request was being processed and that the length of time necessary to process the request could not be predicted at the time the letter was issued. In this letter, the Department informed the Clinic of

its lack of administrative appeal options and its right to sue the Department in federal court. (*See* Ex. F.)

17. At the time of filing this complaint, approximately 447 days have passed since the Clinic filed the request.

18. The Department has failed to make a determination on the Clinic's request or disclose any of the requested records.

### **CAUSES OF ACTION**

#### **First Cause of Action**

##### **Violation of the Freedom of Information Act for Failure to Disclose Requested Records**

19. The Department's failure to disclose the requested records violated 5 U.S.C. § 552(a)(3)(A) and the Department's own regulation under 22 C.F.R. § 171.1.

20. The Department has failed to disclose any documents responsive to the Clinic's request as alleged in paragraphs 6–11 and 15–18.

21. The Clinic has exhausted its administrative remedies with regard to the Department's failure to disclose the requested records because the Department has failed to comply with the applicable time limits to respond to the Clinic's request. *See* 5 U.S.C. § 552(a)(6)(C)(i).

#### **Second Cause of Action**

##### **Violation of the Freedom of Information Act for Failure to Make a Timely Determination**

22. The Department's failure to make a timely determination on the Clinic's request violated 5 U.S.C. § 552(a)(6)(A) and the Department's own regulation under 22 C.F.R. § 171.12(d).

23. The Department was obliged to make a determination on the Clinic's properly filed request within 20 days. *See* 5 U.S.C. § 552(a)(6)(A); 22 C.F.R. § 171.12(d). The Department has failed to fulfill this obligation as alleged in paragraphs 6–11 and 15–18.

24. The Department has twice acknowledged the Clinic's request and expressed its intention to process the request in a timely manner. (*See* Exs. D, F.) However, the Department has never communicated any decision on whether to comply with the request. (*See id.*) The Department's correspondence therefore did not qualify as a determination under FOIA. The Department conceded as much in its letter of December 16, 2011, stating that the Clinic "would not be required to appeal administratively before instituting suit in federal court." (*See* Ex. F.)

### **Third Cause of Action**

#### **Violation of the Freedom of Information Act for Failure to Grant Expedited Processing**

25. The Department's failure to grant the Clinic's request for expedited processing violated 5 U.S.C. § 552(a)(6)(E)(iii) and the Department's own regulation under 22 C.F.R. § 171.12(b).

26. Ms. Core's ongoing removal proceedings and detention in ICE custody demonstrated a compelling need for expedited processing of the Clinic's request as alleged in paragraphs 6–14.

### **RELIEF REQUESTED**

27. The Plaintiff requests that the Court order injunctive relief pursuant to 5 U.S.C. § 552(a)(4)(B) to compel the Department to immediately disclose all agency records requested by the Plaintiff, and for such other relief as the Court deems appropriate. In light of the urgency

of the Plaintiff's request for the documents, as described in paragraphs 7–11, the Plaintiff also requests that the Court order the agency to expedite its processing of our request.

28. The Plaintiff requests an award of attorney fees and litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E).

Respectfully submitted,

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